

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4149/2005

(From the judgement and order dated 22/09/2004 in RSA No.3846/1997  
of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

TARLOK SINGH & ORS.

Petitioner(s)

VERSUS

KARTAR SINGH & ORS.

Respondent(s)

(With appln(s) for permission to file additional affidavit and prayer  
for interim relief and office report)

Date: 18/09/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. AGRAWAL

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner(s)

Mr. Manoj Swarup,Adv.

For Respondent(s)

Mr. Sunil Kumar, Sr. Adv.

No.1

Mr. Shree Prakash Sinha, Adv.

Mr. Manish Kumar, Adv.

Mr. Shekhar Kumar, Adv.

Mr. C.D. Singh,Adv.

UPON hearing counsel the Court made the following

O R D E R

Heard learned counsel for the parties.

Leave granted.

The appeal is allowed.

No costs.

[ Alka Dudeja ]

Court Master

[ Om Prakash ]

Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4180 OF 2006

(ARISING OUT OF S.L.P.(C) NO.4149 OF 2005)

Tarlok Singh and Ors.

...Appellant(s)

Versus

Kartar Singh and Ors.

...Respondent(s)

O R D E R

Heard learned counsel for the parties.

Leave granted.

The plaintiffs-respondents filed a suit for declaration that the decree passed in Civil Suit No. 154/162 of 1966, by the Sub-Judge, Kaithal, was null, void, fraudulent and not binding on the plaintiffs. Further relief prayed for was to declare the plaintiffs to be owners of the suit land measuring 40 bighas 3 biswas and also for recovery of possession of the suit land.

The plaintiffs case, in short, was that they were parties in the earlier suit referred to above, but they were not served with summons thereof and could not contest the suit because of fraud played by the defendants. The plaintiffs claim was based upon

....2/-

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the deed of exchange dated 3rd February, 1955 between Gian Singh, ancestor of defendant Nos.8-12 and the plaintiff-Kartar Singh, in relation to 60 bighas 9 biswas of land, out of which 20 bighas 6 biswas land was transferred in favour of the defendants.

The defendants in their written statement admitted the case of exchange in relation to 20 bighas 6 biswas and according to their case, no land in excess of the aforesaid area was subject matter of exchange. Further case of the defendants was that notices were duly served upon the plaintiffs in the earlier suit and they failed

to appear in spite of the fact that they had knowledge of the suit and, therefore, the decree was binding upon them. Further claim was that suit having not been filed within the statutory period of limitation and, therefore, liable to be dismissed on this ground as well.

Trial court dismissed the suit after recording finding against the plaintiffs on all the points. Against the said judgment, when the appeal was preferred, the lower appellate court reversed the decree passed by trial court after recording a finding that the summons were not served upon the plaintiffs and they were prevented from filing the present suit on account of fraud played by the defendants. Further finding was recorded that the plaintiffs succeeded in proving their title and, accordingly, the suit was decreed. Against the said judgment, when the matter was taken to the High Court in second appeal by the defendants, the same has been dismissed on the ground that there was no substantial question of law. Hence, this appeal by special leave.

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Learned counsel for the appellants in support of his case submitted that this appeal is fit to be allowed on the sole ground that the plaintiffs have not proved their title to the suit property by producing the deed of exchange, which was the basis of their

title. Learned counsel appearing on behalf of the respondents on the other hand submitted that the factum of exchange having been admitted, it would be presumed that the area which was the subject matter of exchange was also admitted by the defendants in their pleading. In our view, the submission of learned counsel for the respondents has been made only to be rejected as categorically it has been stated by the defendants that the subject matter of deed of exchange, was 20 bighas and 6 biswas and not 60 bighas 9 biswas. Learned counsel for the respondents further submitted that even if there is no document of title, the entry in the revenue records, i.e., jamabandi papers etc. can prove title of the plaintiffs. The claim of the plaintiffs having been based upon a deed of exchange, we are clearly of the view that the same has got to be proved by the document alone, which has not been produced and by no other evidence much less jamabandi papers etc. which can prove only their possession. That apart, the plaintiffs have not made out any claim of adverse possession, in the absence of which it cannot be said that in any view of the matter they acquired title by adverse possession. In this view of the matter, we are clearly of the opinion that the lower appellate court was not justified in decreeing the suit and the High Court has committed error of law in upholding the same. The High Court was not correct in holding

that there was no substantial question of law. As a matter of fact there could not have been a better substantial question of law than this, which has been raised before us. This being the position, we have no option but to set aside the impugned orders.

Accordingly, the appeal is allowed, impugned judgments passed by the lower appellate court as well as the High Court are set aside, the judgment and decree rendered by the trial court are restored and the suit is dismissed.

No costs.

.....J.

[B.N. AGRAWAL]

.....J.

[P.P. NAOLEKAR]

New Delhi,  
September 18, 2006.